

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No. 37652 and MERCHANT MARINER'S DOCUMENT NO. 435-92-8391
Issued To: Carson Paul CLEMENT Respondent

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2375

Carson Paul CLEMENT

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 4 October 1983 an Administrative Law Judge of the United States Coast Guard at Houston, Texas suspended Appellant's license and document for two months outright plus six months on twelve months' probation upon finding him guilty of misconduct, charged as a violation of statute. Appellant filed a timely notice of appeal on 2 November 1983.

The specification found proved alleges that while serving as operator on board the uninspected towed vessel M/V JOAN CENAC, under authority of the above captioned license, on or about 10 April, 1983, Appellant wrongfully absented himself from the wheelhouse for a period of approximately four (4) hours leaving the responsibility for navigation of the vessel and tow to an unlicensed mate, in violation of 46 U.S.C. 405(b)(2).

The hearing was held in Port Aurrhur, Texas on 10 May 1983.

At the hearing, Appellant was represented by professional counsel. He entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced into evidence six exhibits and one witness. In defense, Appellant introduced into evidence one document and his own testimony.

After the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He served a written order suspending Appellant's document and license for a period of two months outright plus six months on twelve months' probation.

The Decision and Order was served on 13 October 1983. Appeal was timely filed on 2 November 1983 and perfected on 31 January 1984.

FINDINGS OF FACT

On 9 April 1983, the M/V JOAN CENAC towing the Tank Barge HOLLYWOOD 2009, departed Lake Charles, Louisiana. Its destination

was Vermillion Platform 225, an offshore production platform located approximately 115 miles offshore in the Gulf of Mexico. The HOLLYWOOD 2009 was to be loaded with crude oil and towed back to Lack Charles.

The M/V JOAN CENAC is a sixty-five foot uninspected towing vessel of 93 gross tons. The HOLLYWOOD 2009 is an inspected tank barge.

Sometime between 0100 and 0200 on 10 April 1983, while the M/V JOAN CENAC was enroute to the oil platform, Appellant retired to a bunkroom located behind the wheelhouse and turned over control of the vessel to the unlicensed wheelman, Myron Dupree. At approximately 0520 the HOLLYWOOD 2009, under Mr. Dupree's navigational control, allided with an unmanned production platform located approximately 117 miles from the shore.

BASIS OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge. Appellant urges that, as operator of an uninspected towing vessel which tows barges filled with crude oil from offshore supply facilities, he came within the exception to the manning requirement set forth in 46 U.S.C. 405(b)(3).

APPEARANCE: ERNEST LANE III P.A. by, Ernest Lane III

OPINION

At the time of the incident, 46 U.S.C. 405 (b)(2) provided:

An uninspected towing vessel in order to assure safe navigation shall, while underway, be under the actual direction and control of a person licensed by the Secretary to operate in the particular geographic area and by type of vessel under regulations prescribed by him. A person so licensed may not work a vessel while underway or perform other duties in excess of a total of twelve hours in any consecutive twenty-four-hour period except in case of emergency.

An exemption to this requirement found at 46 U.S.C. 405(b)(3) provided:

Paragraph 2 of this subsection shall not apply to towing vessels of less than two hundred gross tons engaged in a service or preparing or intending to immediately engage in a service to the offshore oil and mineral exploitation industry, including construction for such industry, where the vessels involved would have as their ultimate destination or last point of departure offshore oil and mineral exploitation sites or equipment.

The issue is whether the M/V JOAN CENAC comes within the exception in 46 U.S.C.

405(b)(3).

The phrase "a service to the offshore oil and mineral exploitation industry" as it is used in 46 U.S.C. 405(b)(3) was not originally defined by Congress. In the absence of legislative guidance, a principle canon of statutory construction is that words in a statute are to be interpreted as having their ordinary, contemporary or common meaning. Perrin v. United States, 444 U.S. 37 (1979), Sutherland's Statutory Construction, /z 47.28 (1973). The plain meaning of the phrase "service to the offshore oil ... industry" would appear to be broad enough to include Appellant's towing of the HOLLYWOOD 2009 which was to be loaded with crude oil and returned to shore for delivery.

This reading of the statute is consistent with the legislative history of 46 U.S.C. 405:

The committee adopted a single amendment to the bill. A new paragraph (b)(3) was added exempting certain vessels engaged in servicing the offshore oil and mineral exploitation industry, primarily in the Gulf of Mexico. These vessels differ substantially in their operations from the inland water towboats at which the bill is primarily directed. They operate in waters having relatively little vessel congestion and under special procedures which would make the requirements of the legislation unduly burdensome. Frequently, these vessels operate in foreign waters servicing the growing offshore oil exploitation industries of other nations and the requirements of the legislation might tend to disadvantage them competitively, vis-a-vis foreign operators not subject to the requirement. Finally, it was noted that the Coast Guard is conducting a special study of these offshore operations and that, therefore, legislation at this time would be inappropriate. (emphasis added)

S.Rep. No. 926, 92d Cong. 2d Sess., reprinted in 1972, U.S. CODE CONG. & AD. News, 2760, 2762. This legislative history indicates that Congress had in mind offshore towing operations such as those engaged in by Appellant when it exempted certain vessels in service to offshore energy industries from the 46 U.S.C. 405(b)(2) manning requirements.

CONCLUSION

The M/V JOAN CENAC on 9 and 10 April 1983 was exempt from the 46 U.S.C. 405(b)(2) manning requirements because it was engaged in a "service to the offshore oil and mineral industry" within the meaning of 46 U.S.C. 405(b)(3).

ORDER

The order of the Administrative Law Judge dated at Houston, Texas on 4 October 1983 is VACATED. The findings are SET ASIDE and the charge and specification are DISMISSED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard

VICE COMMANDANT

Signed at Washington, D.C. this 11th day of January, 1985.